

AMENDED IN SENATE SEPTEMBER 3, 2013

AMENDED IN SENATE AUGUST 22, 2013

AMENDED IN SENATE JULY 3, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 25, 2013

AMENDED IN ASSEMBLY APRIL 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 906

Introduced by Assembly Member Pan

February 22, 2013

An act to amend Sections ~~19130, 19131, and 19132~~ *19130 and 19131* of the Government Code, relating to personal services contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 906, as amended, Pan. Personal services contracts: independent contractors.

The State Civil Service Act authorizes state agencies to use personal services contracts if prescribed conditions are met, including requiring the agency to notify the State Personnel Board of its intention to enter into such a contract and requiring the board to contact all organizations that represent state employees who perform the type of work to be contracted. Existing law also requires the board, at the request of an employee organization that represents state employees, to review the adequacy of a proposed or executed personal services contract, as specified.

This bill would authorize state agencies to use personal services contracts when the services are of irregular, unpredictable, or occasional duration and are necessary to carry out instructional activities related to peace officer standards and training. The bill would also limit the term of certain personal services contracts to 2 years, with specified exceptions. The bill would specify that the provisions applicable to personal services contracts do not apply to personal services contracts for architectural or engineering services, as defined.

This bill would prohibit a contracting agency from executing certain proposed personal services contracts until the State Personnel Board has contacted all organizations that represent state employees who perform the type of work to be contracted.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 19130 of the Government Code is
- 2 amended to read:
- 3 19130. The purpose of this article is to establish standards for
- 4 the use of personal services contracts.
- 5 (a) Personal services contracting is permissible to achieve cost
- 6 savings when all the following conditions are met:
- 7 (1) The contracting agency clearly demonstrates that the
- 8 proposed contract will result in actual overall cost savings to the
- 9 state, provided that:
- 10 (A) In comparing costs, there shall be included the state's
- 11 additional cost of providing the same service as proposed by a
- 12 contractor. These additional costs shall include the salaries and
- 13 benefits of additional staff that would be needed and the cost of
- 14 additional space, equipment, and materials needed to perform the
- 15 function.
- 16 (B) In comparing costs, there shall not be included the state's
- 17 indirect overhead costs unless these costs can be attributed solely
- 18 to the function in question and would not exist if that function was
- 19 not performed in state service. Indirect overhead costs shall mean
- 20 the pro rata share of existing administrative salaries and benefits,
- 21 rent, equipment costs, utilities, and materials.
- 22 (C) In comparing costs, there shall be included in the cost of a
- 23 contractor providing a service any continuing state costs that would

1 be directly associated with the contracted function. These
2 continuing state costs shall include, but not be limited to, those
3 for inspection, supervision, and monitoring.

4 (2) Proposals to contract out work shall not be approved solely
5 on the basis that savings will result from lower contractor pay rates
6 or benefits. Proposals to contract out work shall be eligible for
7 approval if the contractor's wages are at the industry's level and
8 do not significantly undercut state pay rates.

9 (3) The contract does not cause the displacement of civil service
10 employees. The term "displacement" includes layoff, demotion,
11 involuntary transfer to a new class, involuntary transfer to a new
12 location requiring a change of residence, and time base reductions.
13 Displacement does not include changes in shifts or days off, nor
14 does it include reassignment to other positions within the same
15 class and general location.

16 (4) The contract does not adversely affect the state's affirmative
17 action efforts.

18 (5) The savings shall be large enough to ensure that they will
19 not be eliminated by private sector and state cost fluctuations that
20 could normally be expected during the contracting period.

21 (6) The amount of savings clearly justify the size and duration
22 of the contracting agreement.

23 (7) The contract is awarded through a publicized, competitive
24 bidding process.

25 (8) The contract includes specific provisions pertaining to the
26 qualifications of the staff that will perform the work under the
27 contract, as well as assurance that the contractor's hiring practices
28 meet applicable nondiscrimination, affirmative action standards.

29 (9) The potential for future economic risk to the state from
30 potential contractor rate increases is minimal.

31 (10) The contract is with a firm. A "firm" means a corporation,
32 limited liability company, partnership, nonprofit organization, or
33 sole proprietorship.

34 (11) The potential economic advantage of contracting is not
35 outweighed by the public's interest in having a particular function
36 performed directly by state government.

37 (b) Personal services contracting also shall be permissible when
38 any of the following conditions can be met:

1 (1) The functions contracted are exempted from civil service
2 by Section 4 of Article VII of the California Constitution, which
3 describes exempt appointments.

4 (2) The contract is for a new state function and the Legislature
5 has specifically mandated or authorized the performance of the
6 work by independent contractors.

7 (3) The services contracted are not available within civil service,
8 cannot be performed satisfactorily by civil service employees, or
9 are of such a highly specialized or technical nature that the
10 necessary expert knowledge, experience, and ability are not
11 available through the civil service system.

12 (4) The services are incidental to a contract for the purchase or
13 lease of real or personal property. Contracts under this criterion,
14 known as “service agreements,” shall include, but not be limited
15 to, agreements to service or maintain office equipment or
16 computers that are leased or rented.

17 (5) The legislative, administrative, or legal goals and purposes
18 cannot be accomplished through the utilization of persons selected
19 pursuant to the regular civil service system. Contracts are
20 permissible under this criterion to protect against a conflict of
21 interest or to ensure independent and unbiased findings in cases
22 where there is a clear need for a different, outside perspective.
23 These contracts shall include, but not be limited to, obtaining expert
24 witnesses in litigation.

25 (6) The nature of the work is such that the Government Code
26 standards for emergency appointments apply. These contracts shall
27 conform to Article 8 (commencing with Section 19888) of Chapter
28 2.5 of Part 2.6.

29 (7) State agencies need private counsel because a conflict of
30 interest on the part of the Attorney General’s office prevents it
31 from representing the agency without compromising its position.
32 These contracts shall require the written consent of the Attorney
33 General, pursuant to Section 11040.

34 (8) The contractor will provide equipment, materials, facilities,
35 or support services that could not feasibly be provided by the state
36 in the location where the services are to be performed.

37 (9) The contractor will conduct training courses for which
38 appropriately qualified civil service instructors are not available,
39 provided that permanent instructor positions in academies or similar
40 settings shall be filled through civil service appointment.

1 (10) The services are of such an urgent, temporary, or occasional
2 nature that the delay incumbent in their implementation under civil
3 service would frustrate their very purpose.

4 (11) The services are of irregular, unpredictable, or occasional
5 duration and are necessary to carry out instructional activities in
6 compliance with Chapter 1 (commencing with Section 13500) of
7 Title 4 of Part 4 of the Penal Code.

8 (c) All persons who provide services to the state under
9 conditions the board determines constitute an employment
10 relationship, unless exempted from civil service by Section 4 of
11 Article VII of the California Constitution, shall be retained under
12 an appropriate civil service appointment.

13 (d) (1) A personal services contract authorized under paragraph
14 (6) or paragraph (10) of subdivision (b) shall not have a term in
15 excess of two years.

16 (2) This subdivision does not apply if the contract is a personal
17 services contract developed pursuant to rehabilitation programs
18 in accordance with Sections 19403 and 19404 of the Welfare and
19 Institutions Code, or by habilitation programs in accordance with
20 Chapter 13 (commencing with Section 4850) of Division 4.5 of
21 the Welfare and Institutions Code, or by a program vendored or
22 contracted through a regional center or the State Department of
23 Developmental Services pursuant to the Lanterman Developmental
24 Disabilities Services Act (Division 4.5 (commencing with Section
25 4500) of the Welfare and Institutions Code), and the contract will
26 not cause an existing state employee to incur a loss of his or her
27 employment or employment seniority, a reduction in wages,
28 benefits, or hours, or an involuntary transfer to a new location
29 requiring a change in residence.

30 (e) This section does not apply to personal services contracts
31 for architectural and engineering services, as defined in Section
32 4529.10.

33 SEC. 2. Section 19131 of the Government Code is amended
34 to read:

35 19131. (a) Any state agency proposing to execute a contract
36 pursuant to subdivision (a) of Section 19130 shall notify the State
37 Personnel Board of its intention. All organizations that represent
38 state employees who perform the type of work to be contracted,
39 and any person or organization which has filed with the board a
40 request for notice, shall be contacted immediately by the State

1 Personnel Board upon receipt of this notice so that they may be
2 given a reasonable opportunity to comment on the proposed
3 contract. Departments or agencies submitting proposed contracts
4 shall retain and provide all data and other information relevant to
5 the contracts and necessary for a specific application of the
6 standards set forth in subdivision (a) of Section 19130. Any
7 employee organization may request, within 10 days of notification,
8 the State Personnel Board to review any contract proposed or
9 executed pursuant to subdivision (a) of Section 19130. The review
10 shall be conducted in accordance with subdivision (b) of Section
11 10337 of the Public Contract Code. Upon such a request, the State
12 Personnel Board shall review the contract for compliance with the
13 standards specified in subdivision (a) of Section 19130.

14 (b) No state agency shall execute a proposed contract pursuant
15 to subdivision (a) of Section 19130 until the State Personnel Board
16 has contacted all of the organizations that represent state employees
17 who perform the type of work to be contracted.

18 ~~SEC. 3. Section 19132 of the Government Code is amended~~
19 ~~to read:~~

20 ~~19132. (a) The State Personnel Board, at the request of an~~
21 ~~employee organization that represents state employees, shall review~~
22 ~~the adequacy of any proposed or executed contract which is of a~~
23 ~~type enumerated in subdivision (b) of Section 19130. The review~~
24 ~~shall be conducted in accordance with subdivision (c) of Section~~
25 ~~10337 of the Public Contract Code. However, a contract that was~~
26 ~~reviewed at the request of an employee organization when it was~~
27 ~~proposed need not be reviewed again after its execution.~~

28 ~~(b) No state agency shall execute a proposed contract pursuant~~
29 ~~to subdivision (b) of Section 19130 until the State Personnel Board~~
30 ~~has contacted all of the organizations that represent state employees~~
31 ~~who perform the type of work to be contracted.~~